Electronically FILED by Superior Court of California, County of Los Angeles on 01/24/2019 04:54 PM Sherri R. Carter, Executive Officer/Clerk of Court, by D. Ramos,Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LOS ANGELES POLICE PROTECTIVE LEAGUE

Petitioners,

vs.

CITY OF LOS ANGELES, a municipal corporation; MICHAEL R. MOORE, Chief of Police, City of Los Angeles; and DOES 1 through 20, inclusive,

Respondents,

ACLU OF SOUTHERN CALIFORNIA and VALERIE RIVERA,

Intervenors,

Case No. 18ST CPO 3495

INTERVENORS' OBJECTIONS TO EVIDENCE FILED IN SUPPORT OF PETITIONER'S APPLICATION FOR ALTERNATIVE WRIT OF MANDATE AND REQUEST FOR STAY (LALLY DECLARATION)

HEARING DATE: February 5, 2019
TIME: 1:30 pm
DEPT: 85

[Petition filed: December 31, 2018]

FIRST AMENDMENT COALITION, a California non-profit, public benefit corporation; LOS ANGELES TIMES COMMUNICATIONS LLC, a Delaware limited liability company; CALIFORNIA NEWSPAPERS PARTNERSHIP L.P., a Delaware limited partnership; THE CENTER FOR INVESTIGATIVE REPORTING, California non-profit, public benefit corporation; and CALIFORNIA NEWS PUBLISHERS ASSOCIATION, an association of California news organizations,

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Intervenors the ACLU OF SOUTHERN CALIFORNIA ("ACLU" or "ACLU of Southern California") and VALERIE RIVERA (Ms. Rivera and with the ACLU "the ACLU Intervenors"), the First Amendment Coalition ("FAC"), Los Angeles Times Communications LLC ("LAT"), California Newspapers Partnership L.P. (doing business as the Southern California Newspaper Group or SCNG ("SCNG") and Bay Area News Group ("BANG")), The Center for Investigative Reporting, Inc. ("CIR"), and California News Publishers Association ("CNPA") (collectively, the "Media Intervenors" and with the ACLU Intervenors, "Intervenors") make the following objections to the Declaration of Craig Lally filed on December 31, 2018 in support of Petitioner's Application for Alternative Writ of Mandate and Request for Stay ("Lally Decl.").

LEGAL BASIS FOR OBJECTIONS

Intervenors object to the Lally Declaration on a number of grounds. The legal support for those objections is as follows:

1. **Lack of Foundation/Speculation (Evid. Code §§ 403(a), 803):** Section 403(a) of the California Evidence Code provides that the "proponent of the proffered evidence has the burden of producing evidence as to the existence of the preliminary fact, and the proffered evidence is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact, when: (1) [t]he relevance of the proffered evidence depends on the existence of the preliminary fact; (2) [t]he preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony; (3) [t]he preliminary fact is the authenticity of a writing; (4) [t]he proffered evidence is of a statement or other conduct of a particular person and the preliminary fact is whether that person made the statement or so conducted himself." Furthermore, Evidence Code section 803 provides that "[t]he court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion. In such case, the witness may, if there remains a proper basis for his opinion, then state his opinion after excluding from consideration the matter determined to be improper."

2. **Lack of Personal Knowledge (Evid. Code § 702):** Section 702 of the California Evidence Code provides that "subject to Section 801, the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter." This objection shall be referred to as "lacks personal knowledge."

3. **Improper Legal Conclusion (Evid. Code § 310(a))**: Evidence Code section 310(a) provides that "[a]ll questions of law (including but not limited to questions concerning the construction of statutes and other writings …) are to be decided by the court." Furthermore, conclusions of law, opinions on legal questions, and opinions on the application of law to the facts, are not proper subjects for a declaration and do not constitute admissible evidence. (*Summers v. A. L. Gilbert Co*. (1999) 69 Cal.App.4th 1155, 1179-80; *Downer v. Bramet* (1984) 152 Cal.App.3d 837, 842; *Hayman v. Block* (1986) 176 Cal.App.3d 629, 639.)

4. **Improper Lay Opinion (Evid. Code § 800):** Section 800 of the California Evidence Code provides that "if a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is permitted by law, including but not limited to an opinion that is: (a) Rationally based on the perception of the witness; and (b) Helpful to a clear understanding of his testimony." Against the objection of a party, improper opinion testimony may not be admitted into evidence.

5. **Improper Expert Opinion (Evid. Code §§ 801, 803)**: Section 801 of the California Evidence Code provides that "If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is: [¶] (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and [¶] (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion

upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion." Section 803 of the California Evidence Code provides that "[t]he court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion."

6. **Inadmissible Hearsay (Evid. Code § 1200):** Section 1200 of the California Evidence Code provides that "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated . . . is inadmissible [except as otherwise provided by law]."

7. **Best Evidence Rule (Evid. Code § 1523):** Section 1523(a) of the California Evidence Code provides that "[e]xcept as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing." This objection shall be referred to as "best evidence."

OBJECTIONS TO DECLARATION OF CRAIG LALLY		
No.	**MATERIAL OBJECTED TO**	**GROUNDS FOR OBJECTION**
1.	**Lally Decl., ¶ 3** "Prior to the effective date of Senate Bill 1421, Chapter 988 of the 2017-2018 Regular Session ("SB 1421"), information contained within LAPPL's Represented peace officers' personnel files was deemed confidential pursuant to California Penal Code Sections 832.7 and 832.8, and subject to exemption from disclosure pursuant to the California Public Records Act ("CPRA"), Government Code section 6250 *et seq.* Such confidential information included all complaints of	**Lack of Personal Knowledge (Evid. Code § 702)** **Lack of Foundation/Speculation (Evid. Code §§ 403(a), 803)** Mr. Lally does not have personal knowledge of the information he asserts in this paragraph and he provides no foundation for his assertions in Paragraph 3 which constitute an incomplete, inaccurate and speculative characterization of the legal meaning of the prior versions of Penal Code sections 832.7 and 832.8, the meaning of California Public Records Act ("CPRA"), Government Code section 6250 *et seq.*, and the scope of protection previously offered under the statutes. **Improper Legal Conclusion (Evid. Code § 310(a))** Mr. Lally's claims are inadmissible legal conclusions regarding the meaning of the prior law and how the law was purportedly previously applied to peace officer records. **Improper Lay Opinion (Evid. Code § 800)** Mr. Lally has no personal knowledge, documents, or other evidence to support his statements. Mr. Lally's statements in Paragraph 3 draw legal conclusions for which Mr. Lally is not qualified to make as a lay person, and therefore constitute improper opinion testimony. **Improper Expert Opinion (Evid. Code §§ 801, 803)**

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	misconduct, investigation of complaints and discipline of peace officers." **Best Evidence Rule (Evid. Code § 1523)** Mr. Lally has not provided the actual written language of California Penal Code Sections 832.7 and 832.8, the California Public Records Act, and Government Code section 6250 *et seq.* Mr. Lally's testimony is not admissible to show the content of these statutes.	Mr. Lally has no formal qualifications to opine on this law in any event, and is not an expert qualified to testify as to the legal status of certain peace officer records or the meaning of the prior statutes.
2.	**Lally Decl., ¶ 4** "The existing right of privacy of LAPPL's represented peace officers, and the corresponding legal obligation by the City of Los Angeles/Los Angeles Police Department ("LAPD") to maintain such peace officer personnel records as confidential, caused such members to make significant employment decisions in reliance on that confidentiality and privacy. For instance, LAPPL's represented employees are legally entitled to administratively appeal findings of misconduct and imposed discipline pursuant the City Charter, applicable City/Police Department rules and regulations, and collective bargaining agreements. The existence of such confidentiality of peace	**Lack of Foundation/Speculation (Evid. Code §§ 403(a), 803)** Mr. Lally does not identify or explain the basis for his statements, or any documents on which he relied, in asserting the alleged causes or bases for alleged "significant employment decisions"; the purported factors in officer's decisions about whether or not to appeal; whether or not officers disagree with the propriety of disciplinary actions; what police officers understand; and what actions police officers might or might not have taken given a different understanding. Furthermore, all of these assertions are speculation about the motives, understanding, and bases of actions of other, unnamed persons. Similarly, Mr. Lally does not provide a basis for his statements in Paragraph 4 regarding the purported legal entitlements of LAPPL represented employees. As such, all of Mr. Lally's statements in Paragraph 4 are inadmissible speculation lacking any foundation. **Lack of Personal Knowledge (Evid. Code § 702)** Mr. Lally lacks personal knowledge to support the statements in Paragraph 4 regarding the alleged understanding, motivations and bases for decisions allegedly made by other, unnamed, officers or the purported legal entitlements. **Inadmissible Hearsay (Evid. Code § 1200)** To the extent Mr. Lally's statements repeat the statements of other officers regarding their understanding, motivations and bases for decisions, Mr. Lally's statements are inadmissible hearsay. **Improper Lay Opinion (Evid. Code § 800); Improper Expert Opinion (Evid. Code §§ 801, 803)** Mr. Lally's statements regarding the alleged understanding, motivations and bases for decisions allegedly made by other,

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	officer personnel records is often a factor in the decision by officers to forgo their right to appeal accusations of alleged misconduct or severity of discipline, and instead, reach a prompt resolution with the LAPD in the furtherance of positive labor relations and in preservation of resources; despite an officer's underlying disagreement with the propriety of such disciplinary action. However, if peace officers understood that they did not or would not maintain privacy in their personnel records, they likely would have made different decisions with respect to their ability to appeal accusations of alleged misconduct."	unnamed, officers are not based on his personal perceptions or experiences. Nor is Mr. Lally qualified by special knowledge, skill, experience, training, or education to offer his opinion regarding peace officers' individual understanding, motivations and bases for decisions. His statements are inadmissible as either lay or expert opinions. Further, because the testimony is speculation, it should be excluded. **Improper Legal Conclusion (Evid. Code § 310(a)) and Best Evidence Rule (Evid. Code § 1523)** Mr. Lally's claims regarding the legal rights of officers and the meaning of the City Charter, applicable City/Police Department rules and regulations, and collective bargaining agreements are improper and inadmissible legal conclusions. Furthermore, these statements violate the best evidence rule since the language of the City Charter, applicable City/Police Department rules and regulations, and collective bargaining agreements are the best evidence of their meaning.
3	**Lally Decl., ¶ 7** "Unless and until a Stay Order is issued by the Court in this case, Petitioner's represented peace officers will suffer irreparable injury and damage by the retroactive application of Senate Bill 1421, in that such an application would unlawfully violate the constitutional	**Lack of Personal Knowledge (Evid. Code § 702)** **Lack of Foundation/Speculation (Evid. Code §§ 403(a), 803)** Mr. Lally lacks personal knowledge to support the statements in Paragraph 7, and Mr. Lally provides no basis for his statements, and does not identify or explain any documents on which he relied, in claiming that "retroactive" application of SB 1421 would allegedly "unlawfully violate" confidentiality of records, cause "peace officers" to suffer "irreparable injury and damage," and that unnamed persons relied on purported confidentiality in making any decisions. Mr. Lally's statements are entirely unsupported and unfounded speculation. **Improper Lay Opinion (Evid. Code § 800); Improper Expert Opinion (Evid. Code §§ 801, 803)**

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	and statutory protection of peace officers to the confidentiality of their peace officer personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019; a right on which many LAPPL-represented peace officers relied in making decisions to appeal or not to appeal accusations of alleged misconduct."	Mr. Lally's statements regarding the purported injury or damage, the alleged reliance, or the bases of decisions allegedly made by other, unnamed, officers are not based on his personal perceptions or experiences. Nor is Mr. Lally qualified by special knowledge, skill, experience, training, or education to offer his opinion regarding other peace officers' injury or damage, the alleged reliance, or the bases of their decisions. His statements are inadmissible as either lay or expert opinions. Further, because the testimony is speculation, it should be excluded. **Improper Legal Conclusion (Evid. Code § 310(a))** Mr. Lally's claims that a certain construction of SB 1421 would "unlawfully violate" confidentiality protections for peace officer records, and his claim that such interpretation would cause "irreparable injury and damage," are improper and inadmissible legal conclusions and speculation. **Inadmissible Hearsay (Evid. Code § 1200)** To the extent Mr. Lally's statements repeat the statements of other officers regarding their purported injury or damage, or their alleged reliance, Mr. Lally's statements are inadmissible hearsay.

Dated: January 24, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Tenaya Rodewald
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AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA

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